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Honorable Sarah Netburn
United States Magistrate Judge
Thurgood Marshall Courthouse
40 Foley Square, Room 4430
New York, NY 10007

Re: **Sprott Money Ltd v. Neal Cabot Ohm (16:CV:07566)**

Dear Judge Netburn:

This firm represents Sprott Money, Ltd, the plaintiff in the above-captioned case. I write to request a pre-motion hearing, in accordance with Local Rule 37.2 and Section C of Your Honor's Individual Rules and to inform the Court of the status of discovery in this case in accordance with the Court's Scheduling Order dated March 24, 2017.

Status of Discovery.

Today Defendant and Plaintiff initiated document production. Plaintiff produced 232 pages of documents and Defendant produced 14. Depositions have not yet been scheduled but Plaintiff has reconsidered its position and has agreed to produce Eric Sprott in addition to Larisa Sprott and Wioletta Traynor. Plaintiff issued a notice to inspect the gold bars at issue in this litigation, which is returnable on July 1. ECF No. 43. The progress of discovery in this action has been hindered by outstanding discovery issues, which are, in turn, addressed below.

Preliminarily, I would like to inform the Court that despite numerous attempts to engage Defendant's counsel on discussion about the issues referenced below, I have been unable to talk to Mr. Ross, or meet with him in person.

Confidentiality Order.

On March 28, I sent to Mr. Ross a draft protective order based on the official form adopted by Judge Katherine Forrest of the Southern District of New York, and requested his comments to the same. I did not receive any response. On March 31, 2017, I again emailed him asking for his comments to the draft protective order and reminded him again on April 26 by email. On May 1, I wrote a letter to Mr. Ross outlining a series of discovery issues including his failure to communicate regarding the confidentiality order. A copy of this letter is attached as Exhibit A hereto. That day, May 1, Mr. Ross responded by saying that his client would not agree with any protective order without providing any further reasoning. Presumably Mr. Ohm intends to use documents obtained through this case in his divorce proceeding against Larisa Sprott currently pending in Canada. Obviously, the Court should not condone this misuse of the discovery devices.

Motion to Compel Production of Documents Responsive to Plaintiff's Requests No. 4, 5, 6 and 7.

Defendant summarily refused to produce documents responsive to Requests No. 4, 5, 6 and 7 on relevancy grounds. I wrote to Mr. Ross regarding this and have requested to discuss these issues with him over the phone (on several emails and in my May 1 letter) but he has failed to make himself available. A copy of an email between me and Mr. Ross regarding scheduling a conference call immediately following my May 1 letter is attached as Exhibit B hereto.

Request No.4 calls for "all documents and communications reflecting the sale of the Gold Bars, including receipts, communications with prospective buyers, and proof of payment." Defendant has taken the position that this request seeks irrelevant documents and has refused to produce them. Clearly, on March 21, Your Honor took a different view when it ruled that anything relating to sale of the Gold Bars was relevant:

> Plaintiff's six interrogatories seek information as to whether defendant sold or disposed of the gold bars at issue; the current location of the gold bars; and if defendant has sold the gold bars, information regarding the sale, including transferee, price, and transferee's address. See ECF No. 20. Defendant objected to all six interrogatories mainly on relevance grounds. See ECF No. 26. But information regarding the bars' location and custodianship is plainly relevant to plaintiff's conversion, replevin, and unjust enrichment claims.

Order of Magistrate Judge Sarah Netburn dated March 21, 2017. Plaintiff is entitled to documents showing sale or communications to prospective buyers (among other things) if these documents in fact exist.

Request No. 5 demands "all documents sufficient to show income tax paid by you or any company controlled by you for income derived from the sale of the Gold Bars." Again, the sale of the Gold Bars, and the income tax that Defendant (or his company) paid is directly correlated to the price paid by a buyer for the Gold Bars and as a result it is clearly relevant to this litigation, as already ruled by Your Honor.

Request No. 6 demands "communications with Larisa Sprott or with any other person or entity regarding the Gold Bars." Again, we are entitled to know what promises or positions Mr.

Ohm has taken or asserted regarding the Gold Bars, apart from communications protected by the attorney-client privilege.

Finally, Request No. 7 demands "all documents concerning the Gold Bars." In an effort to compromise, I suggested to narrow Request No.7 to the following items (if not otherwise captured by other requests): proof of storage, lease agreement or any document showing storage of the Gold Bars, insurance premium paid in relation to the Gold Bars, communications regarding sale, communications regarding storage of the gold bars, and communications and documents concerning or reflecting your ownership of the Gold Bars. Defendant has refused to reconsider his positions despite repeated demands to Ohm's counsel to engage in this discovery process in good faith.

As a result of the foregoing, I respectfully request a pre-hearing motion on the following issues:

1) Motion for a Protective Order concerning discovery of confidential and sensitive information based on the draft I proposed on my March 28, 2017 email to Mr. Ross attached hereto as Exhibit C for convenience of the Court;

2) Motion to Compel production of documents sought pursuant to Requests No. 4, 5, 6, and 7, all of which Defendant has refused to produce on relevancy grounds.

Respectfully submitted,

Irene Ribeiro Gee

Defendant is ORDERED to respond to this letter by next Tuesday, June 6, 2017. A conference regarding the issues raised in plaintiff's letter is scheduled for next Thursday, June 8, 2017, at 11:00 a.m. in Courtroom 219, Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, New York, unless the parties are able to resolve the issues in advance.

SO ORDERED.

SARAH NETBURN
United States Magistrate Judge

June 1, 2017
New York, New York